

**AGENDA
NOVEMBER 4, 2010 - 6:00 P.M.
MEETING OF THE BOARD OF TRUSTEES
OF THE INCORPORATED VILLAGE OF NORTHPORT
REGULAR MEETING**

OPEN MEETING:

SALUTE TO THE FLAG:

ANNOUNCEMENTS: Reminder: tax grievance day is November 16, 2010. A quorum of the Board needs to be present. 8:00 AM ~ 12 Noon.

PRESENTATIONS:

PUBLIC HEARING(S)

PLEASE TAKE NOTICE: that a Public Hearing of the Village Board of Trustees will be held at the Village Hall, 224 Main Street, Northport, New York at 6:00 o'clock in the evening of the 4th day of November, 2010, to consider the following proposed local law:

PLEASE TAKE NOTICE: that a Public Hearing of the Village Board of Trustees will be held at the Village Hall, 224 Main Street, Northport, New York at 6:00 o'clock in the evening of the 4th day of November, 2010, to consider the following proposed local law:

**LOCAL LAW "H" OF 2010
A LOCAL LAW OF
THE VILLAGE OF NORTHPORT
TO AMEND CHAPTER 306
OF THE CODE OF THE VILLAGE OF NORTHPORT
TO ADD §239B(2)(L) WIRELESS COMMUNICATION FACILITIES**

BE IT ENACTED: By the Board of Trustees of the Village of Northport as follows:

Section 1. Legislative Intent

The Board of Trustees of the Incorporated Village of Northport hereby determines that it

is in the best interests of the residents of the Village to set forth specific regulations establishing standards for the safe provision of the wireless communication facilities specified herein, consistent with applicable federal and state laws, statutes, rules and regulations,

Section 2. Statutory Authority

This Local Law is adopted pursuant to New York State Village Law and Municipal Home Rule Law and the Telecommunications Act of 1996, 47 U.S. C. §253.

Section 3. Applicability

The provisions of this Local Law shall apply as specified in the local law.

Section 4. Amendments

Chapter 306 of the Code of the Village of Northport is hereby amended as follows:

**AMENDMENT OF CHAPTER 306
OF THE CODE OF THE VILLAGE OF NORTHPORT
TO ADD §239B(2)(L) WIRELESS COMMUNICATION FACILITIES**

§306-39B(2)(L) Wireless Communication Facilities.

- A. Legislative intent. The Board of Trustees of the Incorporated Village of Northport hereby determines that it is in the best interests of the residents of the Village to set forth specific regulations establishing standards for the safe provision of the wireless communication facilities specified herein, consistent with applicable federal and state laws, statutes, rules and regulations, in order to:
- (1) Protect the health, safety and welfare of the residents of the Village.
 - (2) Protect natural features, aesthetics and residential character of the neighborhoods within the Village and the efficient and orderly development of land uses from potential adverse impacts.
 - (3) Promote and encourage the location of these devices in nonresidential areas of the Village.
 - (4) Minimize the total number of such devices constructed throughout the Village within functional limits.
 - (5) Promote and encourage joint use of such new and existing devices and discourage the erection of such devices for single users.
 - (6) Promote and encourage the location of such devices, to the extent possible, in areas where adverse impacts on the surrounding neighborhoods is minimized.
 - (7) Promote and encourage the configuration of such devices in a manner that minimizes adverse visual impacts through careful design, siting, landscape, screening and innovative camouflaging techniques.

- (8) Promote the ability of providers of services related to such devices to supply such services as effectively and efficiently as possible.
- (9) Prohibit potential damage to adjacent and/or nearby properties from collapse or failure of such devices through adequate engineering and siting requirements.
- (10) Regulate all Wireless Communication Facilities fairly and nondiscriminately among and between the various companies engaged in constructing and/or operating wireless communication facilities within the boundaries of the Incorporated Village of Northport.

B. Definitions and word usage.

- (1) Definitions. Unless otherwise stated in the section where the term is used herein, the meanings of terms used in this chapter shall be as stated below:

ACCESSORY FACILITY – includes any building or other structure which is accessory to the principal use, being subordinate in size, area, extent and purpose to the principal use, and located on the same lot as the principal use.

ANTENNA and/or BEACON – includes any device that incorporates a system of electrical conductors involved in transmitting or receiving radio frequency waves, including but not limited to radio navigation, radio and television frequencies (excluding radar), wireless and microwave communications, generally ranging from 10 hertz to 300,000 megahertz, and/or used in communications that radiate or capture electromagnetic waves, digital signals, analog signals or other communications signals.

COLLOCATION – the use of any communication, transmission and/or reception antennae and/or towers, radio television and/or telecommunications beacons to carry two or more antennae by two or more service providers.

DEVICE(S)—Includes Wireless Communication Facility, Tower, Monopole, antenna, beacon, and accessory facility as defined herein.

FAA – The Federal Aviation Administration of the United States.

FCC – The Federal Communications Commission of the United States.

HEIGHT – The distance measured from the finished mean grade of the parcel to the highest point on the tower or other structure, including the base pad and any antenna.

INCORPORATED VILLAGE OF NORTHPORT and any subdivision thereof – Includes the government of the Incorporated Village of Northport, as well as its various departments, agencies and all other facets of the Village government or its subdivisions.

PREEXISTING TOWERS, MONOPOLES AND ANTENNAE – Includes any and all towers or antennae possessing a valid, current and proper building permit and/or special use permit issued prior to the effective date of this section.

TOWER, MONOPOLE – Includes any structure designed and constructed primarily for the purpose of supporting one or more antennae for telephone, television, radio and similar communication purposes, including self-supporting lattice towers, guyed towers or monopole towers, radio and television transmission and reception towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures and similar structures, inclusive of the structure and any support systems appurtenant thereto.

WIRELESS COMMUNICATION FACILITY – Includes transmission and/or reception antennae and/or towers, monopoles, boxes, radio, television and/or telecommunications beacons, and radio or television stations, including accessory facilities and structures and any device not otherwise defined herein the purpose of which is to facilitate the wireless transmission of voice, data, images or other forms of wireless communication.

- (2) Word usage. When not inconsistent with the context, the present tense shall include the future, and words used in the plural shall include the singular and vice versa. Furthermore, a masculine pronoun shall include the feminine. “Shall” is mandatory; “may” is permissive.
 - (3) Ambiguity. Terms not defined in this article, or terms found to be ambiguous or improperly defined in this section, shall be defined by the Act, or appropriate rules and regulations, pursuant thereto.
- C. Exceptions. Nothing herein shall be construed to apply to, prohibit, regulate or otherwise affect the erection, maintenance or utilization of the following uses, including antennae and support structures, which are deemed to be permitted uses and shall not be subject to the issuance of a special use permit.
- (1) All antennae which are accessory to permitted residential uses and are mounted on the residential dwelling without a tower.
 - (2) Such uses that are licensed to operate as amateur radio stations by the Federal Communications Commission, pursuant to 47 CFR 97.
- D. General provisions.
- (1) Special Use Permit required. No Wireless Communication Facility or any related or accessory structures may be erected without first obtaining a special use permit from the Board of Zoning Appeals, which shall apply the general standards for special use permits set forth in Village Code Chapter 306-239 and the specific standards set forth in §306-239B(2)(L). The Board of Zoning Appeals shall give due consideration to the Incorporated Village of Northport’s

existing land uses and development, environmentally sensitive areas and other appropriate factors in approving the issuance of a special use permit for the siting of communication, transmission and/or reception antennae and/or towers, radio, television and/or telecommunications beacons and radio or television stations.

- (2) Zoning. Such uses shall only be permitted within the commercial and industrial zoning districts of the Incorporated Village of Northport, unless special circumstances demonstrate by clear and convincing proof that a communications system cannot properly function without the location of such a use in a specific residential area.
- (3) Principal and accessory use. Such uses may be considered either principal or accessory uses, in that a different existing use and/or an existing structure on the same lot shall not preclude the installation of an antenna or wireless communication facility on such lot.
- (4) Inventory. Any application for such uses shall include an inventory of all existing like uses, or sites approved for like uses, that are either within the jurisdiction of the Village or within one mile of the border thereof, including specific information about the location, height and design of each wireless communication facility, compiled by the applicant from municipal records. Applicant shall be required to prove that existing wireless communication facilities are not adequate to remedy any gaps in the applicant's coverage.
- (5) Aesthetic requirements. All applications shall be referred to the Board of Architectural and Historic Review for their recommendations which shall be provided to the Zoning Board of Appeals within thirty (30) days. All such uses shall comply with the following requirements, unless otherwise required by the FAA, FCC or other applicable authority:
 - (a) Structures shall be of a neutral color so as to reduce visual obtrusiveness.
 - (b) Design of buildings and related structures shall, to the extent practicable, use materials, colors, textures, screening and landscaping that will blend them into the natural setting and surrounding buildings.
 - (c) If an antenna or beacon is installed on a structure other than a tower, it and its supporting electrical and mechanical equipment must be of a neutral color that is identical to or closely compatible with the color of the supporting structure so as to render it as visually unobtrusive as practicable.

- (d) Lighting. Towers shall not be artificially lighted. If so required, lighting shall be designed to minimize to the maximum extent practicable the resultant disturbance to the surrounding views and properties.
 - (e) Signs. No signs shall be permitted on an antenna or tower.
 - (f) Whenever possible, wireless communication facilities shall be located within or upon existing structures so as to minimize the aesthetic impact.
- (6) Multiple user plans. Service providers submitting a single application for the approval of collocation of such devices for multiple users shall be given priority status in a fast track review process.
- (7) In addition to complying with the requirements of this Chapter, Wireless Communication Facilities located or proposed to be located on property owned, leased or otherwise controlled by the Incorporated Village of Northport or any subdivision thereof, must also obtain a license or lease issued by the Board of Trustees of the Village of Northport, which shall include payment to the Village of the fair and reasonable value of the use of public property. Application to the Board of Trustees must be made simultaneously with the application for the special use permit to the Board of Zoning Appeals. The failure to satisfy this requirement shall result in a stay of all proceedings until all required filings are made.
- (8) No Wireless Communication Facilities may be located within the boundaries of the Village of Northport unless the applicant demonstrates a need for such facilities. In evaluating whether there is a need for the proposed facilities, the Board of Zoning Appeals shall apply a standard for coverage that is reasonably necessary to permit voice, data and image transmissions intended to provide consistent coverage over substantially all of the intended areas.
- (9) Applicants shall be required to pay an application fee of \$2,500.00 for each location on which a Wireless Communication Facility is proposed to be located and shall also be responsible for payment of expenses as provided for in code §147-4.
- (10) Upon obtaining a special use permit and, if applicable, a license agreement with the Village for facilities to be located on Village property, applicants are required to submit to site plan review before the Planning Board, which has the authority to waive such review in appropriate cases.

E. Applications. Applications for special use permits under this section shall include the following (all of which shall be certified or sworn to as accurate by qualified persons) :

- (1) Certification by a qualified professional setting forth that such use meets or exceeds current standard regulations of the FAA, FCC and any other state or federal agency having proper authority.
- (2) A scaled site plan which meets all the site plan requirements of the Code of the Incorporated Village of Northport and any applicable regulations.
- (3) Delineation of all setback distances between the proposed use and all adjoining structures and residentially zoned or developed properties.
- (4) Delineation of all distances from other like uses described in the inventory of existing sites submitted with the application shall be shown on a site plan or map, identifying the type of construction of the existing uses and the owner/operator of any such existing uses, if same can be determined, compiled from municipal records by the applicant.
- (5) A written description of the application's compliance with all applicable requirements of this section and all applicable federal, state and local laws.
- (6) A notarized statement by the applicant as to whether construction of the proposed use will accommodate collocation of additional antennae for future users.
- (7) A description of the suitability or unsuitability of existing like uses, other structures and/or alternative technology that are available in place of the proposed structure and the uses contemplated for the proposed structure.
- (8) All information required for a special use permit in this chapter.
- (9) Applicants are required to submit with their application documented reports, affidavits and studies that establish the need for the proposed facility in the location(s) desired, including evidence to support a request to locate the facilities on residentially zoned properties.
- (10) Applicants are required to submit with their application documented reports, affidavits and studies to establish that the proposed facilities will comply with the federally established limit for RF emissions.

- F. General review. The Zoning Board shall consider the following factors in determining whether to issue a special use permit, in addition to the standards for consideration of special use permit applications set forth in this chapter:
- (1) Height of the proposed structure.

- (2) Proximity of the proposed use to residential structures and residential district boundaries.
- (3) Nature of existing and/or proposed uses on adjacent and nearby properties.
- (4) Site and/or surrounding topography.
- (5) Surrounding tree coverage and foliage.
- (6) Design of the structure, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
- (7) Proposed ingress and egress.
- (8) Availability of suitable existing uses or other structures or alternative technologies not requiring the use of new structures; the Zoning Board should receive and review evidence from the applicant proving that existing facilities are not adequate to remedy the applicant's claimed gap in coverage.
- (9) Applicant is required provide sufficient evidence to establish that there is no suitable location for the proposed facility on non-residential property, including providing an inventory of applicant's efforts to obtain a suitable location on such property and the results of all testing to measure the suitability of the subject site and alternative sites.

G. Review or alternatives.

- (1) No application for such a special use permit shall be granted unless the applicant demonstrates to the reasonable satisfaction of the Zoning Board of Appeals that no existing use, structure or alternative technology not requiring new construction can accommodate the applicant's proposed use.
- (2) An applicant shall submit any information requested by the Zoning Board of Appeals relating thereto. Such evidence may consist of any or all of the following:
 - (a) That no suitable existing uses or structures are located within the geographic area which meet the applicant's engineering requirements.
 - (b) That the fees, costs or contractual provisions required by the owner of an existing like use of structure in order to share it, or adapt it for sharing, are unreasonable. Costs exceeding new use development are presumed to be unreasonable.

- (c) That alternative technologies not requiring the use of towers or structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.
- H. Conditions. The granting of a special use permit herein shall comply with the following conditions:
- (1) Setbacks. The following setback requirements shall apply to all such uses for which a special use permit is required:
 - (a) Wireless communication facilities shall be set back from any adjoining lot line a distance equal to at least one hundred fifty percent (150%) of the height of the facility in order to provide a safe fall-zone; this requirement may be varied only if the Board finds that the granting of a variance from this requirement will not create an unsafe condition.
 - (b) All structures shall satisfy minimum zoning district setback requirements in the district in which it is located.
 - (2) Distance between towers. The required distance between such uses shall be a minimum of 2,000 feet, measured by drawing or following a straight line between the base of any existing like use and the base of the proposed use, delineated on a map or site plan. Said distance requirement may be reduced by the Zoning Board of Appeals only after a finding that a specific application merits such a reduction and closer siting of such uses is warranted due to reception/transmission limitations caused by topographical interference.
 - (3) Security fencing. Such uses shall be surrounded by security fencing not less than eight feet in height and shall be equipped with appropriate anticlimbing devices.
 - (4) Landscaping.
 - (a) All such uses shall be landscaped with a buffer or plant materials sufficient to screen the view of such uses from residential property, consisting of at least one row of mixed evergreen shrubs and trees capable of forming a hedge at least eight feet in height.
 - (b) Existing mature tree growth and natural land forms and topography at the site shall be preserved to the maximum extent possible.
 - (5) Abandonment. Any such use that is not operated for a continuous period of 12 months shall be deemed abandoned, and the owner thereof shall be

responsible for removal of all structures within 90 days of the issuance of a notice by the Village declaring the facilities abandoned and directing removal, and upon failure to do so the Village may take such action at the owner's expense.

- (6) Nonconforming uses. Such uses lawfully existing and operating prior to the effective date of this section shall be permitted as they presently exist, including routine maintenance and reconstruction in like form and height, excluding substantive change, which will require compliance with the requirements of this section.

Section 5. Severability

If any clause, sentence, paragraph, subdivision, section or other part of this Local Law shall for any reason be adjudged by any court of competent jurisdiction to be unconstitutional or otherwise invalidated, such judgment shall not affect, impair or invalidate the remainder of this Local Law, and it shall be construed to have been the legislative intent to enact this Local Law without such unconstitutional, or invalid parts therein.

Section 6. SEQRA

The Board of Trustees has determined that pursuant to §617.5(c) 20 and 27 of the SEQRA regulations this action of the Village of Northport is "routine or continuing agency administration and management, not including new programs or major reordering of priorities" and "adoption of regulations, policies, procedures and local legislative decisions in connection with any Type II action . . ." and therefore, the proposed action of the Village of Northport in this matter is a Type II action and requires no further action pursuant to SEQRA.

Section 7. Effective Date

This local law shall take effect immediately upon filing in the Office of the Secretary of State.

PUBLIC PARTICIPATION:

BOARD APPROVAL OF WARRANT:

Fiscal Year 2010/2011 General Fund bills in the amount of \$ 30,323.60
Fiscal Year 2010/2011 Capital Fund bills in the amount of \$ 5,169.20

TREASURER REPORT:

COMMISSIONER REPORTS:

CHIEF OF POLICE REPORT:

VILLAGE ADMINSTRATOR:

NEW BUSINESS: 1. Suffolk County Purchasing. ~ Trustee Tobin

OLD BUSINESS:

REQUESTS:

CORRESPONDENCE:

RESOLUTIONS:

RESOLUTION 2010 – 155~ APPROVAL OF THE OCTOBER 19, 2010 MINUTES

WHEREAS: Copies of the minutes of the October 19, 2010, meeting were sent to the Board for approval, therefore,

BE IT RESOLVED that said minutes are approved without reading, at this time

RESOLUTION 2010 – 156 LOCAL LAW NO. 9 OF 2010

WHEREAS: that a Public Hearing of the Village Board of Trustees was held at the Village Hall, 224 Main Street, Northport, New York at 6:00 o'clock in the evening of the 4th day of November, 2010, to consider the following local law:

**LOCAL LAW No. 9 OF 2010
A LOCAL LAW OF
THE VILLAGE OF NORTHPORT
TO AMEND CHAPTER 306
OF THE CODE OF THE VILLAGE OF NORTHPORT
TO ADD §239B(2)(L) WIRELESS COMMUNICATION FACILITIES**

RESOLUTION 2010 – 157 ~ PARKING RESTRICTIONS:

BE IT RESOLVED: Parking is prohibited on the north side of Scudder Ave 25 feet east from its intersection with School Street because of a visual obstruction at said intersection pursuant to Village Code Section 256 -10 A (2).

RESOLUTION 2010 – 158 SERVICE AGREEMENT/ CONTRACT WITH LECSA (EMPLOYEE ASSISTANCE PROGRAM)

BE IT RESOLVED: the Mayor is hereby authorized to sign a two year service

agreement with LECSA (employee assistance program) not to exceed the sum of \$3,000. To be paid in two installments September 12, 2010 and September 12, 2011.

RESOLUTION 2010-159 ALTERNATE TO THE BOARD OF ARCHITECTURAL REVIEW BOARD.

BE IT RESOLVED: David Swift is hereby appointed alternate member of the Board of Architectural and Historic Review.

RESOLUTION 2010-160 BUDGET TRANSFERS

BE IT RESOLVED: The Village treasurer is hereby authorized to make the following budget transfer:

A.

RESOLUTION 2010 – 161~ AUTHORIZING EXECUTION OF THE LONG ISLAND INTERGOVERNMENTAL RELATIONS PURCHASING COUNCIL INTERMUNICIPAL AGREEMENT PURSUANT TO §§ 119-o AND 239-n OF THE GENERAL MUNICIPAL LAW

WHEREAS, section 239-n of Article 12-C of the General Municipal Law provides that “[a]ny County . . . town, village, school district, board of cooperative educational services, or council to strengthen local governments and to promote efficient and economical provision of local governmental services within or by such participating municipalities, and to that end such council shall have power to:

- g. Employ such persons and adopt such rules and regulations as shall be necessary and proper to effectuate the purposes of this section.
- h. Provide a forum for local governments to explore and develop areas for municipal cooperative activities pursuant to article five-G of this chapter.
- i. Operate as a purchasing consortium, where authorized by participating municipalities, for the purpose of obtaining economies through joint bidding and purchasing.
- j. Purchase and make available to participating municipalities, where authorized by participating municipalities, goods and equipment, including but not limited to computer hardware and software.
- k. Gather and make available information on surplus goods and equipment for sale or lease...;”

and

WHEREAS, sub-division (1) of section 119-o of Article 5-G of the General Municipal Law provides, in part, that “[i]n addition to any other general or special powers vested in [M]unicipal [C]orporations and districts for the performance of their respective functions, powers or duties on an individual, cooperative, joint or contract basis, [M]unicipal [C]orporations and districts shall have power to enter into, amend, cancel and terminate agreements for the performance among themselves or one for the other of their respective functions, powers and duties on a cooperative or contract basis or for the provision of a joint service...;”

WHEREAS, Suffolk County Resolution No. 558-2010 authorized and directed the County Executive to enter into an intermunicipal agreement with the County of Nassau and other municipalities for purposes of forming and empowering the Long Island Intergovernmental Relations Purchasing Council; and

WHEREAS, Nassau County Resolution No. 154-2010 authorized and directed the County Executive to enter into an intermunicipal agreement with the County of Suffolk and other municipalities for purposes of forming and empowering the Long Island Intergovernmental Relations Purchasing Council; and

WHEREAS, it is the desire of the Incorporated Village of Northport to realize fully the rights and benefits conferred by state law upon municipalities, as has been enumerated above, by entering into the Intermunicipal agreement for the Long Island Intergovernmental Relations Purchasing Council,

NOW, THEREFORE, BE IT

RESOLVED, that the Mayor is hereby authorized, empowered, and directed to enter into the intermunicipal agreement annexed hereto for the Long Island Intergovernmental Relations Purchasing Council pursuant to §§ 119-o and 239-n of the General Municipal Law; and be it further

RESOLVED, the execution and delivery on behalf of, the Incorporated Village of Northport and/or his designee(s) of the Intermunicipal agreement for the Long Island Intergovernmental Relations Purchasing Council shall be conclusive evidence of approval by this governing body to join the Long Island Intergovernmental Relations Purchasing Council and to abide by the terms and conditions of the Long Island Intergovernmental Relations Purchasing Council intermunicipal agreement; and be it further

RESOLVED, that the Board of Trustees, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20) and (27) of Title 6 of the

NEW YORK CODE OF RULES AND REGULATIONS (6 N.Y.C.R.R.) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability of non-significance in accordance with this law.

A RESOLUTION FOR AN EXECUTIVE SESSION: if necessary, for personnel and/or litigation matters.

The next regular meeting of the Board of Trustees will be on Tuesday, November 16, 2010 at 6:00 PM. Northport Village Hall 224 Main Street Northport, NY 11768

Respectfully submitted,

Donna M. Koch, Village Clerk